

DEPARTMENT OF HEALTH AND HUMAN SERVICES
Public Health Service'
Indian Health Service
Rockville, Maryland 20857

Refer to: OHR

INDIAN HEALTH SERVICE CIRCULAR NO. 95-17

**TRIBAL RESOLUTIONS EXCLUDING
INDIAN HEALTH SERVICE
EMPLOYEES FROM RESERVATIONS WHERE ASSIGNED**

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1 . P u r p o s e
2. Background
3. Policy
4. Procedures
5. Effective Date

1. Purpose. This circular establishes Indian Health Service (IHS) policy regarding tribal Resolutions that request Approval of individual IHS employees from Indian reservations where they are assigned to official duty.
2. Background : 'Various tribes have enacted resolutions to exclude a specifically named IHS employee from the tribe's reservation.' Such resolutions are typically enacted because of dissatisfaction with some-aspect of the employee's performance of official IHS duties. Additionally, no, systematic process is in place in IHS to ensure that when such resolutions are-received, they are properly validated according to the complainant tribe's existing Tribal Council by-laws, constitution, etc., and existing Department of Interior (DOI) guidelines.

When such resolutions are enacted) IHS is faced with a dilemma. On the one hand, ignoring the resolution could severely damage relations with the complainant tribe. It can also create the potential for serious immediate problems if the complainant tribe attempts to enforce the resolution through police action. On the other hand, according deference to the resolution generally means reassigning the employee to another location without affording the employee an opportunity to respond to the complaint that form the basis for the resolution. Such action also denies IHS management the opportunity to assess the relevant facts and to make an appropriate judgment. In effect, the tribe usurps the prerogatives of IHS management and accomplishes a de facto reassignment through political action. Employees

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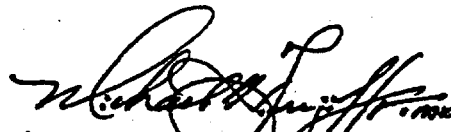
of the IHS must be given an opportunity to respond and that response must be taken, into consideration by IHS management prior to making a final decision. This process is rendered meaningless if a tribal resolution has already been enacted which makes a reassignment inevitable.

3. policy. The IHS management "officials shall ensure that a system is in place to address tribal resolutions that exclude IHS employees from the reservation to which they are assigned by carrying out the following procedures:
 - a. Notify the tribe of this IHS policy and explain that the IHS will review the matter in accordance with this policy.
 - b. validate the resolution through a defined process consistent with the tribe's constitution, by-laws, etc., and any applicable DOI requirements.
 - c. Upon notice, or receipt of such a resolution or directive, take action to establish a fact-finding team to ascertain all relevant facts. The findings of this team will be reported to IHS management within 30 days.
 - d. Based on the findings in item 3.c above, IHS management will make the final determination within 15 days regarding any appropriate personnel action. In making this determination with regard to a tribal resolution proposing to exclude an IHS employee from the reservation, or proposing to require reassignment or other specific personnel action, consideration should be given to:
 - (1) Whether the basis for the resolution is directly related to the performance of official Government duties.
 - (2) Whether the grounds for the resolution are valid and whether they warrant reassignment of the employee, or other appropriate action.
 - (3) Whether the affected employee welcomes or opposes reassignment.
 - (4) Whether and to what extent the affected employee's duties require working cooperatively with the tribe.

(5) Whether the relationship between the employee and the tribe is irreparably damaged.

e. To the extent permitted by the Privacy Act and other applicable laws and regulations, the complainant tribe will ordinarily be notified of the final determination made by IHS management, and the rationale on which it is based.

4. **Effective Date.** This circular is effective upon date of signature.



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